

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL J. COLEMAN,)	
)	
Plaintiff,)	8:04CV97
)	
v.)	
)	
MARK STOKEY, BRYAN EDINS,)	MEMORANDUM AND ORDER
JAMES CARMAN, THOMAS NESBIT,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	
_____)	

The plaintiff's complaint requested place of trial in Omaha, Nebraska. Defendant James Carman's answer requested place of trial in North Platte, Nebraska, and included an attached affidavit in support of that request. Filing 38. The plaintiff and defendants Stokey, Edins, and Nesbitt have not responded to Carman's request for place of trial in North Platte.

The affidavit of James Carman (filing 38 attachment), states:

- The alleged occurrences which provide the basis for plaintiff's complaint occurred at the Lincoln County Jail in North Platte, Nebraska;
- The majority of witnesses, including the plaintiff and the named law enforcement defendants, are from either North Platte, Nebraska or Denver, Colorado;
- North Platte is 280 miles from Omaha;
- A trial in Omaha rather than North Platte will cause Lincoln County to accrue more travel costs and expenses and, as to those law enforcement officers who must attend the trial, longer absences from their duties.

The court takes judicial notice of the fact that, as to those witnesses in Denver, Colorado who must attend the trial, North Platte is 280 miles closer than Omaha.

Counsel for defendants Stokey, Edins, and Nesbitt is from Lincoln, Nebraska; counsel for the plaintiff is from Omaha, Nebraska; counsel for defendant Carman is from North Platte, Nebraska.

NECivR 40.1(b)(2) provides that "[t]he judge may resolve conflicting requests [for place of trial] without oral argument" and "shall consider the convenience of the litigants, witnesses, and counsel when deciding the place of trial." The evidence before me establishes that North Platte is a substantially more convenient location for the witnesses and litigants than Omaha. Only plaintiff's counsel and, to a lesser extent, counsel for defendants Stokey, Edins, and Nesbitt, will be inconvenienced by moving the trial location to North Platte. Based on this evidence, I conclude this trial should be held in North Platte, Nebraska

IT THEREFORE HEREBY IS ORDERED: The place of trial for this case is changed to North Platte, Nebraska.

DATED this 28th day of July, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge